1 2 3	COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY RECEIVED					
4	JUL 0 6 2012					
5 6	In the Matter of: PUBLIC SERVICE ORDER MISSION	E				
7 8 9 10 11 12 13 14	for Approval of its 2012 Environmental Compliance Plan, for Approval of its Amended Environmental Cost Recovery Surcharge Tariff, for Certificates of Public Convenience and Necessity, and for Authority to Establish a Regulatory Account Case No. 2012-00063					
16	PETITION OF BIG RIVERS ELECTRIC CORPORATION FOR CONFIDENTIAL					
17 18	<u>PROTECTION</u>					
19	1. Big Rivers Electric Corporation (" <u>Big Rivers</u> ") hereby petitions the Kentucky					
20	Public Service Commission ("Commission"), pursuant to 807 KAR 5:001 Section 7 and KRS					
21	61.878, to grant confidential protection to certain information Big Rivers is filing with its					
22	responses to the second set of information requests from the Commission Staff, the Attorney					
23	General, Kentucky Industrial Utility Customers, Inc. ("KIUC"), and Sierra Club. The					
24	information Big Rivers seeks to protect as confidential is hereinafter referred to as the					
25	5 "Confidential Information."					
26	2. The Confidential Information consists of:					
27	a. An electronic attachment to Big Rivers' response to Item 6 of the					
28	Commission Staff's second request for information ("PSC 2-6").					
29	b. Portions of an attachment to Big Rivers' response to Item 3 of KIUC's					
30	second request for information ("KIUC 2-3").					
31	c. An electronic attachment to Big Rivers' response to Item 6 of KIUC's					
32	second request for information ("KIUC 2-6").					

1	d.	Portions of an attachment to Big Rivers' response to Item 11a of KIUC's
2		second request for information ("KIUC 2-11a").
3	e.	A hardcopy attachment to Big Rivers' response to Item 11b of KIUC's
4		second request for information ("KIUC 2-11b").
5	f.	An electronic attachment to Big Rivers' response to each of Item 20a and
6		Item 20c of KIUC's second request for information ("KIUC 2-20a" and
7		"KIUC2-20c," respectively).
8	g.	A hardcopy attachment to Big Rivers' response to Item 26b of KIUC's
9		second request for information ("KIUC 2-26b").
10	h.	A hardcopy attachment to Big Rivers' response to Item 26e of KIUC's
11		second request for information ("KIUC 2-26e").
12	i.	Portions of Big Rivers' response to Item 27a of KIUC's second request for
13		information ("KIUC 2-27a").
14	j.	Portions of Big Rivers' response to Item 28b of KIUC's second request for
15		information "KIUC 2-28b").
16	k.	Two electronic attachments to Big Rivers' response to Item 35 of KIUC's
17		second request for information ("KIUC 2-35").
18	1.	A hardcopy attachment to Big Rivers' response to Item 41a of KIUC's
19		second request for information ("KIUC 2-41a").
20	m.	A hardcopy attachment to Big Rivers' response to Item 44b of KIUC's
21		second request for information (" <u>KIUC 2-44b</u> ").
22	n.	An electronic attachment to Big Rivers' response to Item 44g of KIUC's
23		second request for information ("KIUC 2-44g").

1	0.	A hardcopy attachment to Big Rivers' response to Item 46 of KIUC's
2		second request for information ("KIUC 2-46").
3	p.	A hardcopy attachment to Big Rivers' response to Item 52b of KIUC's
4		second request for information ("KIUC 2-52b").
5	q.	An electronic attachment to Big Rivers' response to Item 60d of KIUC's
6		second request for information ("KIUC 2-60d").
7	r.	A hardcopy attachment to Big Rivers' response to Item 71c of KIUC's
8		second request for information ("KIUC 2-71c").
9	s.	A hardcopy attachment to Big Rivers' response to each of Item 1a, Item
10		1b, Item 1c, Item 1d, and Item 1e of Sierra Club's second request for
11		information (" <u>SC 2-1a</u> " " <u>SC 2-1b</u> ," " <u>SC 2-1c</u> ," " <u>SC 2-1d</u> ," " <u>SC 2-1e</u> ,"
12		respectively).
13	t.	An electronic attachment to Big Rivers' response to Item 5a-g of the
14		Sierra Club's second request for information ("SC 2-5a-g").
15	u.	Electronic attachments to Big Rivers' response to Item 9e of the Sierra
16		Club's second request for information ("SC 2-9e").
17	v.	An electronic attachment to Big Rivers' response to Item 27c.ii of Sierra
18		Club's second request for information ("SC 2-27c.ii").
19	w.	Three hardcopy attachments to Big Rivers' response to Item 31 of Sierra
20		Club's second request for information ("SC 2-31").
21	х.	Portions of Big Rivers' response to Item 48 of Sierra Club's second
22		request for information ("SC 2-48").
23	у.	A hardcopy attachment to Big Rivers' response to SC 2-48a.

- One (1) copy of Big Rivers' response to SC 2-48a, hardcopies of the pages of
- 2 KIUC 2-3 and KIUC 2-11a that contain Confidential Information, and the hardcopy attachments
- 3 referenced above, with the Confidential Information highlighted with transparent ink, printed on
- 4 yellow paper, or otherwise marked 'CONFIDENTIAL,' is being filed with this petition. One (1)
- 5 copy of the electronic attachments referenced above is being filed on the USB drive that is
- 6 marked confidential and filed with this petition.
- 7 4. A copy of Big Rivers' responses to KIUC 27a, KIUC 28a, and SC 2-48 with the
- 8 Confidential Information redacted and a copy of Big Rivers' responses to the other requests for
- 9 information, with the confidential attachments redacted, are being filed with the original and
- each of the ten (10) copies of Big Rivers' responses to the information requests filed with this
- 11 petition. 807 KAR 5:001 Sections 7(2)(a)(2), 7(2)(b).
- 12 5. A copy of this petition with the Confidential Information redacted has been served
- on all parties to this proceeding. 807 KAR 5:001 Section 7(2)(c). Big Rivers is also providing a
- 14 copy of the Confidential Information to all parties, as they have all signed a confidentiality
- 15 agreement.
- 16 6. The Confidential Information is not publicly available, is not disseminated within
- Big Rivers except to those employees and professionals with a legitimate business need to know
- and act upon the information, and is not disseminated to others without a legitimate need to
- 19 know and act upon the information.
- 20 7. If and to the extent the Confidential Information becomes generally available to
- 21 the public, whether through filings required by other agencies or otherwise, Big Rivers will
- 22 notify the Commission and have its confidential status removed. 807 KAR 5:001 Section
- 23 7(9)(a).

8. As discussed below, the Confidential Information is entitled to confidential protection based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1).

I. Big Rivers Faces Actual Competition

9. Big Rivers competes in the wholesale power market to sell energy excess to its members' needs. Big Rivers' ability to successfully compete in the wholesale power market is dependent upon a combination of its ability to get the maximum price for the power sold, and keeping the cost of producing that power as low as possible. Fundamentally, if Big Rivers' cost of producing a kilowatt hour increases, its ability to sell that kilowatt hour in competition with other utilities is adversely affected. As is well documented in multiple proceedings before this Commission, Big Rivers' margins are derived almost exclusively from its off-system sales.

10. Big Rivers also competes for reasonably priced credit in the credit markets, and its ability to compete is directly impacted by its financial results. Any event that adversely affects Big Rivers' margins will adversely affect its financial results and potentially impact the price it pays for credit. As was described in the proceeding before this Commission in the Big Rivers unwind transaction case, Big Rivers expects to be in the credit markets on a regular basis in the future.¹

¹ See Order dated March 6, 2009, In the Matter of: Joint Application of Big Rivers, E.ON, LG&E Energy Marketing, Inc., and Western Kentucky Energy Corporation for Approval to Unwind Lease and Power Purchase Transactions, PSC Case No. 2007-00455, pages 27-30 and 37-39.

1	II. The Confidential Information is Generally Recognized as Confidential or			
2 3	<u>Proprietary</u>			
4	11. The Confidential Information for which Big Rivers seeks confidential treatment	ıt		
5	under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentu	ıcky		
6	law.			
7	12. The attachment to Big Rivers' response to PSC 2-6 is a creep stress analysis an	ıd		
8	testing results, which gives Big Rivers' competitors insight into Big Rivers' future maintenance	ce		
9	needs, timeframes for when those needs will be fulfilled, information related to when Big Rivers			
10	generating units will be down for maintenance, and thus, Big Rivers' future need for power or			
11	availability of power to sell into the market.			
12	13. The Confidential Information contained in the attachment to Big Rivers' response	nse		
13	to KIUC 2-3 is Big Rivers' projected operating and maintenance ("O&M") expenses, projected	ed		
14	off-system sales and revenues, and other items that can be used to calculate O&M expenses and			
15	off-system sales and revenues.			
16	14. The attachment to Big Rivers' response to KIUC 2-6 is a comparison of prices	i		
17	that ACES Power Marketing ("APM") used in its production cost modeling. The prices were	:		
18	provided by APM and Pace Global ("Pace"), and neither company has given Big Rivers			
19	permission to publicly release the information.			
20	15. The Confidential Information contained in the attachment to Big Rivers' respo	nse		
21	to KIUC 2-11a is proposals or agreements from APM, Pace, and Sargent & Lundy, which			
22	contain the companies' prices, terms, rates, and approach to the project, all of which they deem			
23	confidential and proprietary. The companies have not given Big Rivers permission to publicly			
24	release the proposals			

- 1 16. The attachment to Big Rivers' response to KIUC 2-11b is a task order containing
- 2 APM's terms, rates, and approach for the services APM provided, all of which are proprietary
- 3 business practices that APM does not want shared with its competitors. APM has not given Big
- 4 Rivers permission to publicly release the information.
- 5 17. The attachments to Big Rivers' response to KIUC 2-20a and KIUC 2-20c are
- 6 comparisons of forward energy prices.
- 7 18. The attachment to Big Rivers' response to KIUC 2-26b and the Confidential
- 8 Information in Big Rivers' responses to KIUC 2-27a and KIUC 2-28b contain proprietary
- 9 information about Pace's modeling process. Pace has not given Big Rivers permission to
- 10 publicly release the information.
- 11 19. The attachment to Big Rivers' response to KIUC 2-26e is a chart containing
- Pace's coal price projections. Pace has not given Big Rivers permission to publicly release the
- 13 information.
- 14 20. The attachments to Big Rivers' response to KIUC 2-35 are two files containing
- 15 forward price and load data extracted from APM's confidential database.
- The attachment to Big Rivers' response to KIUC 2-41a is a chart from Pace
- 17 relating to projected coal retirements in MISO that Pace used to develop its price forecasts. Pace
- has not given Big Rivers permission to publicly release the information.
- 19 22. The attachment to Big Rivers' response to KIUC 2-44b is a Load Concentration
- 20 Analysis and Mitigation Plan ("Load Concentration Analysis"). A previous version of this
- 21 document was filed under a petition for confidential treatment on June 1, 2012. This document
- 22 reveals detailed information related to Big Rivers' plans in the event of a smelter closure and
- 23 includes rankings of the options, along with inputs, input assumptions, and outputs of models

- 1 under several scenarios. This detailed information could be used by utilities that compete with
- 2 Big Rivers to attract new loads to their service areas.
- The attachment to Big Rivers' response to KIUC 2-44g is a number of emails
- 4 containing financial forecasts, detailed information about Big Rivers' cost of producing power,
- 5 projected allowance, fuel, and power prices, and drafts of the Load Concentration Analysis.
- 6 24. The attachment to Big Rivers' response to KIUC 2-46 is chart that show Big
- 7 Rivers' recent O&M expenses.
- 8 25. The attachment to Big Rivers' response to KIUC 2-52b is shows Big Rivers'
- 9 variable generating costs for certain of its generating units.
- The attachment to Big Rivers' response to KIUC 2-60d is supporting information
- for the Load Concentration Analysis and is confidential for the same reasons as the Load
- 12 Concentration Analysis.
- 13 27. The attachment to Big Rivers' response to KIUC 2-71c is a chart from Pace
- showing projected energy price correlations.
- 15 28. The attachments to Big Rivers' response to SC 2-1a, SC 2-1b, SC 2-1c, SC 2-1d,
- and SC 2-1e are five tables showing Big Rivers' generating costs, including variable and fixed
- 17 O&M expenses.
- The attachment to Big Rivers' response to SC 2-5a-g is a spreadsheet showing
- 19 Big Rivers' projected heat rates, equivalent forced outage rating, and unit availability, which
- 20 gives Big Rivers' competitors insight into Big Rivers generator availability and thus Big Rivers
- 21 future need for power or availability of excess power to sell into the market.
- 22 30. The attachments to Big Rivers' response to SC 2-9e contain projected variable
- costs, including for fuel and allowances, and projected sales. The attachments are Excel files,

- and the entirety of the files is being filed on the CONFIDENTIAL USB drive because the
- 2 question asks for electronic files.
- 3 31. The electronic attachment to Big Rivers' response to SC 2-27c.ii contains
- 4 workpapers and modeling files prepared by GDS Associates ("GDS") and used in the
- 5 preparation of Big Rivers' load forecast. GDS has not given Big Rivers permission to publicly
- 6 release this information because GDS would be competitively harmed if its competitors had
- 7 access to the proprietary work and information contained in the files.
- 8 32. The attachments to Big Rivers' response to SC 2-31 contain vendor proposals to
- 9 develop specifications for a request for proposal for the Wilson FGD project. These proposals
- 10 contain the vendors prices, terms, rates, and approach to the project, all of which the vendors
- deem confidential and proprietary. The vendors have not given Big Rivers permission to
- 12 publicly release the proposals.
- 13 33. The Confidential Information contained in Big Rivers' response to SC 2-48 is a
- proprietary description of Pace's modeling process. Pace has not given Big Rivers permission to
- 15 publicly release the information.
- The attachment to Big Rivers' response to SC 2-48a is a chart showing forward
- 17 coal prices and analysis of forward coal prices from Pace. Pace has not given Big Rivers
- permission to publicly release the information.
- 19 35. Public Disclosure of the Confidential Information would reveal detailed
- 20 information relating to Big Rivers' current and future cost of producing power; Big Rivers'
- 21 forecasts relating to power market prices, fuel prices, allowance prices; and related information;
- and Big Rivers' future need for power or availability of excess power to sell into the market.

1 Knowledge of such projected data would give Big Rivers' suppliers and 36. 2 competitors an unfair competitive advantage. Public disclosure of this information would help Big Rivers' suppliers, buyers, and competitors to determine when and Big Rivers will have 3 power available to sell into the market or when Big Rivers needs power, and the amount of 4 5 power Big Rivers has to sell. Public disclosure of the Confidential Information will also give 6 Big Rivers' suppliers, buyers, and competitors insight into Big Rivers' cost of producing power 7 and Big Rivers' view of future prices for fuel prices, market power prices, and allowance prices, which would indicate the prices at which Big Rivers is willing to buy or sell such items. 8 9 37. Information about a company's detailed inner workings is generally recognized as 10 confidential or proprietary. See, e.g., Hoy v. Kentucky Indus. Revitalization Authority, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such 11 12 information concerning the inner workings of a corporation is 'generally recognized as 13 confidential or proprietary""). Moreover, the Commission has previously granted confidential treatment to similar information. See, e.g., letters from the Commission dated July 28, 2011, and 14 December 20, 2011, in In the Matter of: Application of Big Rivers Electric Corporation for a 15 16 General Adjustment in Rates, PSC Case No. 2011-00036 (granting confidential treatment to 17 multi-year forecast); letter from the Commission dated December 21, 2010, in In the Matter of: 18 The 2010 Integrated Resource Plan of Big Rivers Electric Corporation, PSC Case No. 2010-19 00443 (granting confidential treatment to fuel cost projections, revenue projections, market price projections, financial model outputs, etc.); letter from the Commission dated July 20, 2010, in 20 21 Administrative Case No. 387 (granting confidential treatment to a list of future scheduled

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outages, which can give competitors insight into Big Rivers' wholesale power needs).

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III. Disclosure of the Confidential Information Would Permit an Unfair Commercial Advantage to Big Rivers' Competitors

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38. Disclosure of the Confidential Information would permit an unfair commercial advantage to Big Rivers' competitors. As discussed above, Big Rivers faces actual competition in the wholesale power market and in the credit market. It is likely that Big Rivers would suffer competitive injury if that Confidential Information was publicly disclosed.

39. The Confidential Information includes material such as Big Rivers' projections of fuel costs and power prices. If that information is publicly disclosed, potential fuel and power suppliers would have insight into the prices Big Rivers is willing to pay and could manipulate the bidding process, leading to higher prices for Big Rivers and impairing its ability to compete in the wholesale power and credit markets. In PSC Case No. 2003-00054, the Commission granted confidential protection to bids submitted to Union Light, Heat & Power ("ULH&P"). ULH&P argued, and the Commission implicitly accepted, that if the bids it received were publicly disclosed, contractors on future work could use the bids as a benchmark, which would likely lead to the submission of higher bids. Order dated August 4, 2003, in In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment, PSC Case No. 2003-00054. The Commission also implicitly accepted ULH&P's further argument that the higher bids would lessen ULH&P's ability to compete with other gas suppliers. *Id.* Similarly, potential fuel and power suppliers manipulating Big Rivers' bidding process would lead to higher costs to Big Rivers and would place it at an unfair competitive disadvantage in the wholesale power market and credit markets. Potential market power purchasers could use the information related to Big Rivers' projected off-system sales and revenues to know when Big Rivers is long on power and could used that information to manipulate their bids, leading to lower revenues to Big Rivers and placing it at an unfair competitive disadvantage in the credit markets.

40. Public disclosure of the Confidential Information, including the fuel prices, allowance prices, other variable cost information, and information about Big Rivers' wholesale power needs would give the power producers and marketers with which Big Rivers competes in the wholesale power market insight into Big Rivers' cost of producing power and need for power and energy during the periods covered by the information. Knowledge of this information would give those power producers and marketers an unfair competitive advantage because they could use that information to potentially underbid Big Rivers in wholesale transactions. It would also give potential suppliers to Big Rivers a competitive advantage because they will be able to manipulate the price of power bid to Big Rivers in order to maximize their revenues, thereby driving up Big Rivers' costs and impairing Big Rivers' ability to compete in the wholesale power and credit markets.

41. Additionally, APM, Pace, Sargent & Lundy, GDS, and the vendors for the specifications for the Wilson FGD project consider the information they provided to Big Rivers to be confidential and proprietary. In Case No. 2003-00054, the Commission granted confidential protection for bids submitted to <u>ULH&P</u>. ULH&P argued, and the Commission implicitly accepted, that the bidding contractors would not want their bid information publicly disclosed, and that disclosure would reduce the contractor pool available to ULH&P, which would drive up ULH&P's costs, hurting its ability to compete with other gas suppliers. Order dated August 4, 2003, in *In the Matter of: Application of the Union Light, Heat and Power Company for Confidential Treatment*, PSC Case No. 2003-00054. Similarly, in *Hoy v. Kentucky Indus. Revitalization Authority*, the Kentucky Supreme Court found that without protection for confidential information provided to a public agency, "companies would be reluctant to apply for

- 1 investment tax credits for fear the confidentiality of financial information would be
- 2 compromised. *Hoy*, Ky., 907 S.W.2d at 769.
- In Big Rivers' case, APM, Pace, Sargent & Lundy, GDS, and the other vendors
- 4 have not given Big Rivers permission to release their information publicly, and they do not want
- 5 the information they provided to Big Rivers on a confidential basis to be publicly disclosed.
- 6 Suppliers such as these rely on the confidentiality of their information, and if they believed that
- 7 the Commission would deny confidential treatment for the confidential information they provide
- 8 to Big Rivers, it is likely that fewer suppliers would offer their services to Big Rivers. As such,
- 9 public disclosure of the Confidential Information would likely reduce the pool of suppliers
- willing to enter into agreements with Big Rivers, resulting in increased prices for Big Rivers and
- impairing its ability to compete in the wholesale power and credit markets.

12 <u>IV. Conclusion</u>

- 13 43. Based on the foregoing, the Confidential Information is entitled to confidential
- protection. If the Commission disagrees that Big Rivers is entitled to confidential protection, due
- process requires the Commission to hold an evidentiary hearing. *Utility Regulatory Com'n v.*
- 16 Kentucky Water Service Co., Inc., 642 S.W.2d 591 (Ky. App. 1982).
- WHEREFORE, Big Rivers respectfully requests that the Commission classify and protect
- as confidential the Confidential Information.

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1	On this the 6^{th} day of July, 2012.	
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3		1)14
4		James M. Miller
5		Tyson Kamuf
6		SULLIVAN, MOUNTJOY, STAINBACK
7		& MILLER, P.S.C.
8		100 St. Ann Street
9		P. O. Box 727
10		Owensboro, Kentucky 42302-0727
11		(270) 926-4000
12		
13		Counsel for Big Rivers Electric Corporation